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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Petition of U S West Communications, Inc. for	)	
Forbearance from Regulation as a Dominant	)	CC Docket No. 98-157
Carrier in the Phoenix, Arizona MSA	)	

COMMENTS OF GTE

GTE Service Corporation and its designated affiliated companies[1] (collectively, "GTE") respectfully submit these comments in support of the Petition for Forbearance from regulation as a dominant carrier filed by U S West Communications, Inc. ("U S West") with respect to the Phoenix, Arizona MSA filed on August 24, 1998 (the "Petition"),

I. Introduction and Summary

In its Petition, U S West has made an incontrovertible showing that the market for high capacity services in the Phoenix, Arizona Metropolitan Statistical Area ("MSA") is rife with competition. In seeking classification as a non-dominant carrier of high capacity access services, U S West lays out a carefully constructed roadmap from which the Commission can reach only a single destination -- grant of U S West's petition for forbearance.

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1 GTE Alaska Incorporated; GTE Arkansas Incorporated; GTE California Incorporated; GTE Florida Incorporated; GTE Hawaiian Telephone Company Incorporated; The Micronesia Telecommunications Corporation; GTE Midwest Incorporated; GTE North Incorporated; GTE Northwest Incorporated; GTE South Incorporated; GTE Southwest Incorporated; Contel of Minnesota, Inc.; and Contel of the South, Inc.; GTE Communications Corporation.

GTE supports U S West in its petition and urges the Commission to move expeditiously in granting this request. The matter of competition in the provision of high capacity services has been a focus of incumbent local exchange carriers ("ILECs") for many years. U S West's petition is but one of many potentially forthcoming petitions in which ILECs will make similar showings of full competition in a wide variety of customer and geographic markets. The Commission has chosen to defer action on even the most rudimentary measures of pricing flexibility, even though in its Access Reform Order the Commission promised such action more than a year ago.[2] This deferral has left ILECs with no choice but to pursue individual grants of pricing flexibility through the petition process, as in the instant case. The Commission can and should take the initiative with the U S West petition and send a clear signal that high capacity services have crossed the forbearance threshold, not only in Phoenix, but ubiquitously across all MSAs in America.

While U S West's petition fully substantiates the need for forbearance, it should not be used to establish a universal benchmark. Carriers serving largely suburban and rural territories (such as GTE) might never reach the level of competitive density as described by U S West, but nonetheless forbearance would be appropriate. For example, strategically placed CAP facilities in some business markets could effectively eliminate the incumbent carrier as a provider of high capacity services in those markets. Forbearance in such circumstances would, therefore, be wholly appropriate.

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2 Access Charge Reform, CC Docket No. 96-262, First report and Order, FCC 97-158 (released May 16, 1997), at ¶ 49.

Even if the Commission decides that U S West has not made the necessary showing at this time for forbearance, there are pricing flexibility alternatives that the Commission should promote in the interest of consumers. GTE urges the Commission, at a minimum, to permit volume and term agreements, geographical deaveraging, and customer-specific pricing for ILECs in the provision of high capacity services.

II. The Commission already has a comprehensive record upon which to grant forbearance from regulation of high capacity services for all incumbent local exchange carriers.

In January 1998, the United States Telephone Association ("USTA") submitted for the Commission's reference a primer on "The Need for Carrier Access Pricing Flexibility in Light of Recent Marketplace Developments."[3] This primer underscores the basic premise of the U S West petition: "CAPS are competing aggressively in the special access markets and have significant capacity in place that can be used to provide switched access as well as local exchange service."[4] As U S West appropriately documents, five facilities-based market participants have extensive fiber route miles in and around the greater Phoenix area. These established and well financed competitors, with over 800 route miles of fiber capacity in the Phoenix area, are attracting and retaining many of U S West's formerly most profitable business customers, and will be able to continue to do so.[5] But by no means is this situation unique to Phoenix. Indeed, the NERA Primer details substantial and unrelenting growth

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3 "The Need for Carrier Access Pricing Flexibility in Light of Recent Marketplace Developments," by Richard Schmalensee and William Taylor, National Economic Research Associates ("NERA") (The "NERA Primer").

4 Id. at 18.

5 Petition at 14-16.

in the high capacity markets in virtually all of America's largest cities. Using the FCC's Fiber Deployment Update, End of Year 1996, the NERA Primer shows that the growth of fiber deployment for RBOCs, beginning in 1990, has declined from 36 percent to 15 percent in 1996. Conversely, the growth in the deployment of fiber by CAPs has increased from 49 percent in 1991 to 104 percent in 1996.[6]

While it cannot be ignored that ILECs still have more miles of fiber deployed that do CAPs, there can be only one reason for the diametrically opposing growth rates for the two competitors: CAPs are gaining a customer base at the expense of ILECs. It is equally apparent that a substantial number of fiber miles deployed by ILECs function as host-remote links for remote digital line concentrators which are used primarily in residential markets. Given the limitedl efforts of competitors to enter residential markets, it can be reasonably concluded that virtually none of the CAPs' fiber miles are used to attract residential customers. The differential between the growth rates of fiber deployment used for business customers is even more dramatic.

In light of these market conditions, GTE believes that the Commission should not only grant the U S West petition, but it should also take the action it should have taken two years ago. The high capacity services market, regardless of whether it is viewed from a customer perspective or from a geographic perspective, is fully competitive in every sense of the word. By acting promptly on the U S West petition, the Commission can signal that it has recognized the competitiveness of this market. The Commission

6 NERA Primer at 19. Similarly, GTE has seen the deployment of fiber (in sheath kilometers) drop from a 21.6% increase in 1992 to 12% in 1997.

should immediately move to declare that the high capacity services market is irrevocably open to competition.

III. U S West has established that it does not possess market power in the provision of high capacity services in the Phoenix MSA.

U S West has set forth a compelling case for its lack of market power in the provision of high capacity services in the Phoenix MSA. GTE agrees with U S West that the percentage of retail market share is the more meaningful measure of market power.[7] Specifically, there is a unique relationship that exists between a provider and a customer, even when the provider receives underlying services from other providers, including the incumbent. The underlying provider is simply not able to compete with the retail provider who can offer a full package of services, including services that the incumbent may be precluded from providing under any circumstances.

In the case of the Phoenix MSA, U S West has demonstrated that the five facilities-based competitors have the capacity in place to attract sophisticated business customers who have the resources to search out and negotiate attractive prices. Moreover, U S West's largest consumers of these high capacity services, other carriers, now have "both the incentive and the ability to drive a hard bargain for good prices and levels of service by the threat of going elsewhere."[8] This is the classical definition of demand elasticity and another clear indication that U S West does not possess market power.

In the matter of supply elasticity, U S West once again makes its case. Because of the existing 800 route miles of fiber optic capacity already deployed by competitors in

[7] Petition at 19.

[8] Petition at 24.

and around Phoenix, U S West's competitors can serve 95 percent of U S West's current high capacity demand in the Phoenix area by investing approximately $127 million.[9] It is clear that suppliers of fiber optic facilities can readily increase the supply of high capacity services easily and with manageable financial obligations. GTE supports U S West's contention that it does not posses market power in the provision of high capacity services in the Phoenix MSA.

IV. While U S West seeks non-dominant treatment in the provision of high capacity services, the Commission can and should consider other forms of forbearance, including volume and term agreements, geographical deaveraging, and customer-specific pricing.

GTE is concerned that the Commission will treat the U S West petition as a "litmus test" for forbearance from regulation in the highly competitive high capacity services marketplace, which would be incorrect For example, GTE's service territories do not involve the larger MSAs in the same manner as the RBOCs. GTE may never be able to demonstrate that CAPs have placed facilities in relationship to GTE's business customers to the extent that U S West shows in its petition. Nevertheless, in many service areas, the loss of a single business account can be devastating to the incumbent's economic viability in that serving area. Thus, the Commission should not set forbearance triggers based on the showing of U S West in Phoenix. Rather, the Commission should recognize that high capacity transport is highly competitive regardless of the market area. In this narrow service category, consumers will be well served by forbearance.

Even if the Commission should determine that U S West has not made the necessary showing for non-dominant treatment as a provider of high capacity services,

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9 Petition at 27.

there are other remedies that the Commission should pursue as a response to an ILEC's lack of market power in the provision of these services. At a minimum, the Commission should provide relief in the form of volume and term agreements, geographical deaveraging, and permitting an ILEC to respond to customer-specific pricing proposals.

The Commission should allow ILECs to offer volume and term discounts immediately. Going back as far as the Commission's NPRM on Access Reform, it has been "recognize[d] ... that significant benefits ... may result from volume and term discounts, including the possibility that volume and term discount may enable an incumbent LEC to reflect its actual cost more accurately."[10] Currently, CLECs can provide such discounts without any restraints or preconditions. ILECs will only be able to compete effectively in the emerging competitive marketplace if allowed to price with the same flexibility as CLECs. With respect to high capacity services , the market situation in Phoenix is replicated in virtually every MSA across the country. There can no longer be any justification by the Commission to withhold volume and term discounts as an alternative pricing plan for incumbents.

Geographical deaveraging is another opportunity for the Commission to provide much needed relief in the provision of high capacity services. ILEC costs vary in different geographic areas, yet the Commission's rules require averaged rates across large territories. GTE has previously articulated how pricing inefficiencies result from

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[10] Access Reform NPRM at ¶ 190.

requiring ILECs to compute study area-averaged for switched access.[11] Study area averaging has several disadvantages in the special access arena as well; it represses demand for transport, it creates artificial incentives for access customers to choose non-ILEC access providers, and it establishes an artificial pricing umbrella.

Deaveraging, in contrast, allows ILECs to price efficiently and to compete for high capacity access services in a manner that is consistent with costs and competitive alternatives. The Commission should, therefore, allow ILECs to establish geographically deaveraged pricing structures in high capacity services markets. This will permit ILECs to establish efficient rate structures and rates based on different cost or market characteristics. While GTE has argued that the flexibility to deaverage should not be contingent upon any competitive triggers, the market reality in the provision of high capacity services makes the trigger issue a moot point. The market for high capacity services is fully competitive in virtually every customer or geographic market across the country.

Finally, the Commission should move expeditiously to permit customer-specific pricing flexibility by ILECs. The flexibility to offer customized access arrangements and pricing structures is warranted regardless of the level of competition. ILECs have been permitted to provide intrastate service at contract-based rates for years, regardless of the state of competition.[12] More importantly, access customers demand this kind of responsiveness. High capacity service customers are large, sophisticated buyers with

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11 *See* GTE Telephone Operating Companies Petition for Waiver of Part 69 of the Commission's Rules to Geographically Deaverage Switched Access Services (filed Nov. 27, 1995).

12 *See, e.g.*, General Order (G.O.) No. 96-A (Calif. Pub. Util. Comm. 1962); Fla. Stat. § 364.051.

substantial bargaining power. These customers devote significant resources to "shopping the competition" in search of the best deal available. As U S West makes clear in the Phoenix market, CAPs recognize this fact and have diligently place competitive access facilities within 100 feet of a large portion of U S West's customer base for high capacity services. If ILECs are not permitted to compete on a customer-specific pricing basis with these well franchised and aggressive CAPs and their equally sophisticated provider customers, the marketplace for high capacity access services will be irreparably distorted.

V. Conclusion.

U S West has fully established that forbearance with respect to high capacity services is both necessary and appropriate, and the Commission should expeditiously grant its petition. Moreover, the Commission can and should take the initiative with the send a clear signal that high capacity services have crossed the forbearance threshold, not only in Phoenix, but ubiquitously across all MSAs in America.

Respectfully submitted,

GTE SERVICE CORPORATION and its designated affiliated companies

By: ______________________

John F. Raposa
GTE SERVICE CORPORATION
600 Hidden Ridge
HQE03J27
Irving, TX 75038
(972) 718-6969

Gail L. Polivy
GTE SERVICE CORPORATION
1850 M Street, N.W.
Suite 1200
Washington, DC 20036
(202) 463-5214

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THEIR ATTORNEYS

Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Comments of GTE" have been mailed by first class United States mail, postage prepaid, on October 7, 1998 to the parties listed below

James T. Hannon
Jeffry A. Bruggeman
Suite 700
1020 19th Street, NW
Washington, DC 20036
(Counsel for U S WEST Communications, Inc.)

Jane Jackson*
Chief
Competitive Pricing Division
Federal Communications Commission
Room 518
1919 M Street, NW
Washington, DC 20554

Judy R. Quinlan

Judy R. Quinlan

*Hand Delivery